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Supreme Court, U.S.
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No. 02-1132

In The

Supreme Court of the United States

NORMAN CHRISTMAN and DIANE CHRISTMAN, H/W,

Petitioners,

vs.

ROBERT SANDT and CITY OF ALLENTOWN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does Petitioners' Petition for a Writ of Certiorari fail to set forth appropriate grounds for review by this Honorable Court, as Petitioner has failed to cite any conflicts in the Circuit Court's Decision with the existing law in other Circuits or in the Commonwealth of Pennsylvania?

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STATEMENT OF THE CASE

This case arises out of the City of Allentown's administration of its Property Rehabilitation Code, specifically Article 1759, which sets forth licensing requirements for all residential rental units. (R.R.17a). This section of the Ordinance requires that each owner, operator, responsible agent or manager must keep and maintain all residential units in compliance with all applicable state laws and regulations and local ordinances and to keep such properties in a good and safe condition. Article 1759 provides for a phased-in systematic inspection program for all rental properties requiring that a maximum of 60 days notice must be given for all initial inspections and allowing for a full inspection of each residential unit no more frequently than once within a five-year period. (R.R.17a).

The plaintiff-appellants are tenants of a non-owner occupied rental unit located at 246 East Maple Street, which is in Allentown's Fourteenth Ward. In compliance with Article 1759-06, a letter was sent to the owners of the residence giving a 60-day notice of inspection. (R.R.51a). On March 9, 2001, the defendant Robert Sandt, a code enforcement officer for the City of Allentown responsible for inspecting all rental properties within the Fourteenth Ward of Allentown, arrived at the residence to conduct an inspection. (R.R.40a). Sandt initially conducted an inspection of the exterior of the property. (R.R.41a). Sandt then knocked on the front door of the property and plaintiff-appellant Norman Christman appeared at the door. (R.R.31a). Christman was extremely hostile and Sandt wanted to avoid a confrontation. (R.R.32a). Sandt explained to Christman that it was his intention to obtain a search warrant. (R.R.32a). Sandt then walked off the

property and towards a parking lot where the landlord, Mr. Cooper, was standing. (R.R.32a).

On March 13, 2001, Sandt procured a search warrant from the magistrate and peacefully conducted the inspection at 246 East Maple Street along with another inspector and two uniformed police officers. (R.R.78a). After both inspections, Sandt completed a form detailing the repairs that were to be made to the property and submitted the form to the landlord. (R.R.53a).

Petitioners filed this civil action for damages under 42 U.S.C. §1983, based on an alleged unlawful search. The District Court on 3/5/02 entered summary judgment for the defendants, concluding that they properly conducted an administrative search of plaintiffs' home. The Third Circuit Court of Appeals affirmed the judgment of the District Court by opinion and order dated November 4, 2002. (See Appendix 1-16 attached to Petition for Writ of Certiorari).

REASONS RELIED UPON FOR DENIAL OF WRIT

Petitioners' Petition for Writ of Certiorari factually and legally mis-characterized the issues in this case. The Christmans were approached by the City of Allentown and were requested to allow access to the home for an inspection pursuant to the administration of the City of Allentown's Property Rehabilitation Code, specifically Article 1759, which sets forth licensing requirements for all residential rental units. (R.R.17a). Initially, the Petitioners aver that the City of Allentown Ordinance contravenes the rationale offered by *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727,

18 L.Ed.2d 930 (1967). The main thrust of the Petitioners' argument is that there is a penalty provision in the Ordinance.

In relying upon the *Camara v. Municipal Court of the City and County of San Francisco, supra.*, Petitioners overlook the fact that when the City attempted to inspect the property, the Section of the Ordinance authorized employees of city departments or city agencies, so far as may be necessary for the performance of their duties, to have the right to enter a property at reasonable times. The appellant in *Camara, supra.*, refused the inspectors access to his apartment without a search warrant. Thereafter, a complaint was filed charging Camara with refusing to permit a lawful inspection in violation of Section 507 of the Code. The appellant was arrested and released on bail. The case was brought, initially, in a California Superior Court alleging that Camara was awaiting trial on the criminal charge of violating the San Francisco Housing Code by refusing to permit a warrantless inspection of his residence. The Court of Appeals, in relying on *Frank v. State of Maryland*, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959), *Eaton v. Price*, 364 U.S. 263, 80 S.Ct. 1463, 4 L.Ed.2d 1708 (1960), and decisions in other states, held that Section 503 does not violate the Fourth Amendment Rights, because it "is part of a regulatory scheme which is essentially civil rather than criminal in nature, inasmuch as the section creates a right of inspection which is limited in scope and may not be exercised under unreasonable conditions". 387 U.S. 528, 87 S.Ct. 1730.

In *Frank v. State of Maryland, supra.*, the Supreme Court upheld the conviction of one who refused to permit a warrantless inspection of private premises for the purposes of locating and abating a suspected public nuisance.

In the majority opinion of *Frank*, *supra.*, the Court held that municipal fire, health, and housing inspection programs "touched at most upon the periphery of the important interests safeguarded by the Fourteen Amendment's protection against official intrusion," 359 U.S. at 367, 79 S.Ct. at 809, because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances. Since the inspector does not ask that the property owner open his door to a search for "evidence of criminal action" which may be used to secure the owner's criminal conviction, the historic interest of "self-protection" jointly protected by the Fourth and Fifth Amendments are said not to be involved, but only the less intense "right to be secure from intrusions into personal privacy." *Id.*, at 365, 79 S.Ct. at 808. The Court in *Camara* went on to indicate that, like most regulatory laws, fire, health, and housing codes are enforced by criminal process. 387 U.S. 523, 531, 87 S.Ct. 1727, 1732. The Court also indicated that oftentimes when cities discover violations, that then produces an administrative compliance order, but refusal to comply is still a criminal offense and the facts of compliance are verified by a second inspection, sometimes again without a warrant. As concluded in the *Camara* case, a refusal to permit an inspection is itself a crime, punishable by fine or even by a jail sentence. *Id.* Therefore it is clear that the City of Allentown Ordinance is not the first Ordinance to contain provisions which do penalize individuals for violations of the ordinance.

In *Camara*, *supra.*, the U.S. Supreme Court went on to hold that warrants should issue, but not only when the inspector possessed probable cause to believe that a particular dwelling contains violations of the minimum

standards prescribed by the Code being enforced. The U.S. Supreme Court held 'unlike the search pursuant to the criminal investigation, the inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions, which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce such minimum standards even upon existing structures. In determining whether a particular inspection is reasonable – and thus in determining whether there is probable cause to issue a warrant for that inspection – the need for inspection must be weighed in terms of these reasonable goals of code enforcement. 387 U.S. 535, 87 S.Ct. 1734.

The Supreme Court further recognized that the only effective way to seek universal compliance with the minimum standards required by Municipal Codes is through routine periodic inspections of all structures. It is in this issue that the probable cause debate focuses, for the agency's decision to conduct an area inspection is based on its appraisal of conditions in the area as a whole, not on its knowledge of conditions in each particular building. The Supreme Court went on to hold that there were a number of persuasive factors combining to support the reasonableness of area code-enforcement inspections. "First such programs have a long history of judicial and public acceptance. See *Frank v. State of Maryland*, 359 U.S. at 367-371, 79 S.Ct. at 809-811. Second, the public interest

demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results . . . finally, because the inspections are neither personal in nature nor are aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." 387 U.S. 523, 538, 87 S.Ct. 1727, 1735.

The Supreme Court concluded by stating: "having concluded that the area inspection is a 'reasonable' search of private property within the meaning of the Fourth Amendment, it is obvious 'probable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multifamily apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling." 387 U.S. 538, 87 S.Ct. 1727, at 1735-1736.

The Supreme Court further stated: "[T]he warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant . . . such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the

historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy. See *Eaton v. Price*, 364 U.S. at 273-274, 80 S.Ct. at 1468-1469 (opinion of Mr. Justice Brennan). The Supreme Court finally stated: "Similarly, the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing local policy, in most situations, of authorizing entry, but not entry by force, to inspect." 387 U.S. 523, 540, 87 S.Ct. 1727, 1736.

In the Petitioners' Brief they continuously argue that the City of Allentown has "criminalized" the inspection process. Clearly in reviewing the cases cited by the Supreme Court in *Camara*, including the factual circumstances of the *Camara* case itself, there were penalties associated with someone refusing the inspections. The Supreme Court, however, did not believe that that process or that sanction was sufficient to "criminalize" the inspection process. The inspection process in the City of Allentown is not designed or intended to discover evidence of a crime. It is designed to inspect housing and insure the safety of the tenants, and the neighbors.

The Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523 (1967), sought to resolve the tension between the rigid text of the Fourth Amendment and the difficulties in preventing the deterioration of urban housing. The Court noted intensive efforts at all levels of government to contain and eliminate urban blight through periodic mandatory inspections of private property. The Court recognized that if these inspections could only take place upon the belief that a violation of a housing code had already occurred or was imminent, then the purpose of the inspection – avoiding the violations – would be thwarted. The Court further acknowledged the only effective way to

seek universal compliance with the minimal standards required by municipal codes was by routine periodic inspections of all structures. *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.).

Consequently, after *Camara*, *supra.*, a state must obtain a warrant to inspect private property if the occupant does not consent to the search; however, the definition of "probable cause" to obtain such a warrant was relaxed. The Court held that probable cause to issue a warrant to inspect exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Thus, in housing inspections and other administrative searches, probable cause is met by finding a reasonable relationship between the "legislative or administrative standards and the dwelling to be searched." *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.).

In arriving at a definition of probable cause, the court balanced the need to search against the invasion which the search entails. *Smith v. The Borough of Glenolden of Delaware County, Pennsylvania*, 1994 WL 672618 (E.D. Pa.). The Supreme Court identified three reasons that justified diminished protection for housing inspections: (1) a long history of judicial and legislative acceptance of housing inspection programs; (2) an interest in preventing and abating dangerous conditions that may not be apparent without a close inspection of the residence; and (3) the impersonal nature of the investigation. *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

Article 1759 of the Codified Ordinance of the City of Allentown, which addresses the licensing of residential rental units, was passed by certified voter initiative on May 18, 1999. The purpose of the ordinance, in addition to protecting and promoting the public health, safety and welfare of citizens, was to establish the rights and obligations of owners and occupants relating to residential rental units in Allentown and to encourage owners and occupants to maintain and improve the quality of residential housing within the community. The ordinance provides for a systematic inspection program, registration and licensing of residential rental units and penalties. The inspections are to occur once within a five-year period and a minimum of 60 days notice is given to all initial inspections.

The District Court and Third Circuit Court of Appeals correctly found that the City of Allentown's reasons for the need of a residential inspection program were consistent with the purpose of such inspections as enunciated by the Supreme Court in *Camara*, *supra*. Contrary to the argument set in plaintiff-appellant's brief, the city ordinance is neither personal in nature, directed towards the tenant nor aimed at the discovery of evidence of a crime. The purpose of the inspection is to put the landlord on notice to remedy whatever defects are found on the premises. Under no circumstances is the inspection directed towards the tenant or to uncover any evidence that a crime may have been committed by the tenant. It is simply a periodic inspection to reduce and eliminate urban blight. There is no language in the ordinance that would allow a penalty to be assessed against a tenant or subsequent imprisonment as a result of a continuing violation.

Petitioners continue to argue the search warrant was issued without probable cause, apparently failing to comprehend that the legal definition of probable cause in the context of a housing inspection is very different than probable cause in a criminal case. The Supreme Court in *Camara* established that probable cause to conduct a housing inspection would depend upon "reasonable legislative or administrative standards" that underly the inspection. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area; they will not necessarily depend upon specific knowledge of the condition of a particular dwelling. *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

Thus, the City of Allentown need not have specific knowledge concerning the particular condition of appellants' apartment. As long as the City of Allentown's ordinance is reasonable, then the search warrant is valid if the scope of the search relates to the administrative scheme that the ordinance established. Specifically, *Camara* does not require that an inspector have specific knowledge of a potential violation of particular property. *Smith v. Borough of Glenolden*, 1994 WL 672618 (E.D. Pa. 1994). Indeed, a code enforcement officer could lawfully obtain a warrant even if he knew the property was not in violation of the ordinance.

As the Supreme Court has previously ruled, these area searches are valid. Furthermore, the area search is all that needs to be revealed in the warrant for the granting of a search warrant and, clearly, that is what occurred

in this situation. The warrant contained sufficient information indicating that the individual needed to conduct his inspection of the premises pursuant to the area search and the ordinance at issue.

The Ordinance at issue sets forth that units would be inspected not any more frequently than once within a five-year period unless a complaint or violation had occurred or a public officer had probable cause to believe that a violation was occurring pursuant to Section 1741.08 of the Ordinance. The Ordinance provides for initial inspections to occur in accordance with a phase-systematic inspection program to be prepared and made available by the Department of Community Development. There was a requirement of a 60-day notice for all initial inspections. There is no question that said notice was provided in this case to the owners. Thereafter, an inspection was arranged with the landlord.

The tenant, Mr. Christman, however, refused to allow the building inspector to enter the property to conduct the inspection. The inspector then went to the magistrate's office and obtained a search warrant, a copy of which is made a part of this record. It was clear from the record that this was part of a systematic inspection. Mr. Sandt testified that his job for the year 2000 was to conduct the residential inspections within the 16th Ward of the City of Allentown. This particular property was within the 16th Ward. Mr. Sandt further testified that this, ultimately, turned out to be the last property to be inspected in the 16th Ward because of the difficulty in arranging the appointment with the landlord and then the difficulty in obtaining access to the apartment due to Mr. Christman's not allowing the access.

Respondents believe that this case falls within the ambit of the previously decided cases and is not appropriate for the granting of Certiorari as this issue is already well settled.

It is clear from the record that the City of Allentown was acting pursuant to a "neutral area plan" which was appropriate under the Ordinance and the case law that has been handed down by the courts. The District and Circuit Courts were both correct in determining that this administrative search may be conducted based upon the reduced showing as set forth in the *Camara*, *supra.*, decision.

The City was conducting inspections of the 16th Ward. The Ordinance provided for notice. The notice was given. The tenants refused to let the inspector into the apartment. The inspector obtained a warrant pursuant to the Ordinance's intentions and the safeguards of *Camara*, *supra.* The alleged "penalty" provision in this Ordinance was no different from that in *Camara*, *supra.*

The City had a legitimate intent in conducting their inspections, which has been long recognized by the Courts. This issue has been litigated and approved. There is no need for this Honorable Court to consider the issue again.

CONCLUSION

For all the foregoing reasons, the Respondents, Robert Sandt and the City of Allentown respectfully request this Honorable Court to deny the Petition for Writ of Certiorari and to dismiss this appeal.

Respectfully submitted,

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